

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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CMFG Life Insurance Company,

Case No. 2:24-cv-01969-APG-DJA

Plaintiff,

Order

v.

Tavarus Dunbar; and Kevin Dunbar, Jr.,
individually and as representative of the Estate
of Kevin Dunbar, Sr.,

Defendants.

Before the Court is Plaintiff CMFG Life Insurance Company's motion to deem service effectuated or for an extension of time to serve Defendant Kevin Dunbar, Jr.¹ and for service by alternative means (ECF No. 18), a sealed version of that motion (ECF No. 24), and an unopposed motion for extension of time for the parties to file a discovery plan and scheduling order (ECF No. 25). Because the Court finds that an extension of time for service and service by alternative means is warranted, but that deeming service effectuated is not, the Court grants Plaintiff's motion and sealed motion in part and denies them in part. (ECF Nos. 18, 24). Because the Court finds that Defendant has shown good cause, it grants the motion to extend time for the parties to file a discovery plan and scheduling order. (ECF No. 25).

I. Service by alternative means.

The Constitution does not require any particular means of service of process. *Rio Props., Inc. v. Rio Intern. Interlink*, 284 F.3d 1007, 1017 (9th Cir. 2002) (*citing Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)). It requires only that service "be reasonably calculated to provide notice and an opportunity to respond." *Id.* Service of process is

¹ Because both Defendants in this action share the last name "Dunbar," the Court refers to Kevin Dunbar, Jr. using his first name.

1 governed by Rule 4 of the Federal Rules of Civil Procedure. A federal court lacks jurisdiction
2 over a defendant unless the defendant has been properly served under Rule 4. *Direct Mail*
3 *Specialists, Inc. v. Eclat Computerized Techs., Inc.*, 840 F.2d 685, 688 (9th Cir. 1988) (citation
4 omitted). Rule 4, however, “is a flexible rule that should be liberally construed so long as a party
5 receives sufficient notice of the complaint.” *Id.* “[W]ithout substantial compliance with Rule 4,”
6 “neither actual notice nor simply naming the defendant in the complaint will provide personal
7 jurisdiction.” *Id.*

8 When a case is proceeding in federal court, an individual is served by: (1) following state
9 law for serving the summons in the state where the district court is located or where service is
10 made; (2) delivering the summons and complaint to the individual personally; (3) leaving a copy
11 of summons and complaint at the defendant’s dwelling or usual place of abode with someone of
12 suitable age and discretion who resides there; or (4) delivering a copy to an agent authorized by
13 appointment or law to receive service. Fed. R. Civ. P. 4(e). Service of an individual under
14 Nevada’s rules is similar. *See* Nev. R. Civ. P. 4.2(a). And, in Nevada, if a party demonstrates
15 that those service methods are “impracticable, the court may, upon motion and without notice to
16 the person being serviced, direct that service be accomplished through any alternative service
17 method.” Nev. R. Civ. P. 4.4(b)(1).

18 A motion seeking an order for alternative service must provide affidavits, declarations, or
19 other evidence setting forth specific facts demonstrating the due diligence that was undertaken to
20 locate and serve the defendant and the defendant’s known, or last-known, contact information,
21 including the defendant’s address, phone numbers, email addresses, social media accounts, or any
22 other information used to communicate with the defendant. Nev. R. Civ. P. 4.4(b)(2). If the
23 Court orders alternative service, the plaintiff must also make reasonable efforts to provide
24 additional notice under Nevada Rule of Civil Procedure 4.4(d)² and mail a copy of the summons

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27 ² Nevada Rule of Civil Procedure 4.4(d)(1) provides that, in addition to any other service method,
28 the court may order a plaintiff to make reasonable efforts to provide additional notice of the
commencement of the action to the defendant using other methods of notice, including certified
mail, telephone, voice message, email, social media, or any other method of communication.

1 and complaint, as well as any order of the court authorizing the alternative service method, to the
2 defendant's last-known address. Nev. R. Civ. P. 4.4(b)(3). The plaintiff must also provide proof
3 of service under Nevada Rule of Civil Procedure 4(d). Nev. R. Civ. P. 4.4(b)(4).

4 The Nevada Rules of Civil Procedure also provide for service by publication. Nev. R.
5 Civ. P. 4.4(c). The Court may order service by publication if the defendant cannot, after due
6 diligence, be found. Nev. R. Civ. P. 4.4(c)(1)(a). The Nevada Rules also provide various
7 requirements that a motion seeking service by publication must meet, including establishing that
8 the defendant is a necessary or proper party, providing the proposed language of the summons,
9 and suggesting one or more newspapers that are reasonably calculated to give the defendant
10 notice of the proceedings. *See* Nev. R. Civ. P. 4.4(c)(2).

11 Federal Rule of Civil Procedure 4(m) provides that if a defendant is not served within
12 ninety days after the complaint is filed, the court must dismiss the action. However, if the
13 plaintiff shows good cause for the failure, the court must extend the time for service for an
14 appropriate period. Fed. R. Civ. P. 4(m).

15 Here, the Court declines to deem service effectuated. But it finds that Plaintiff has
16 demonstrated that alternative service and service by publication under the Nevada Rules of Civil
17 Procedure is warranted. Plaintiff has demonstrated that personal service has been impracticable
18 by filing declarations, affidavits, and other evidence detailing the efforts to which its counsel has
19 gone to locate and contact Kevin. (ECF No. 18-1 – ECF No. 18-5). Plaintiff has also provided
20 Kevin's last known addresses, phone number, email addresses, and social media account
21 (although notes that the account does not allow Plaintiff to contact Kevin). Plaintiff has further
22 met the requirements for a motion seeking service by publication. The Court thus grants in part
23 and denies in part Plaintiff's motion. The Court grants Plaintiff's request for an extension of time
24 to serve Kevin and for service by alternative means. The Court denies Plaintiff's request to deem
25 service effectuated. The Court further requires additional service efforts.

26 **II. Extension of time to file the discovery plan and scheduling order.**

27 Plaintiff requests additional time to file the parties' joint discovery plan and scheduling
28 order, explaining that it is still trying to serve Kevin and that Plaintiff and counsel for Tavarus

1 Dunbar believe it would be most efficient to file a joint discovery plan once all defendants have
2 been served and appeared. (ECF No. 25). The Court finds that Plaintiff has shown good cause to
3 extend the time by which the parties must file their discovery plan. *See* Fed. R. Civ. P. 6(b); *see*
4 LR IA 6-1. So, the Court grants the request.

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6 **IT IS THEREFORE ORDERED** that Plaintiff's motions to deem service effectuated or
7 extend the time for service and allow service by alternative means (ECF No. 18) (public motion)
8 (ECF No. 24) (sealed motion) are **granted in part and denied in part**. They are granted in part
9 regarding Plaintiff's request to extend the time for service and for service by alternative means.
10 They are denied in part regarding Plaintiff's request that the Court deem service effectuated.

11 **IT IS FURTHER ORDERED** that the deadline for service is extended to **February 28, 2025**.
12 Fed. R. Civ. P. 4(m).

13 **IT IS FURTHER ORDERED** that Plaintiff must attempt service on Kevin Dunbar by
14 the following methods:

- 15 • Sending the complaint and summons via FedEx to Kevin Dunbar's two last known
16 addresses in Florida.
- 17 • Sending the complaint and summons via FedEx to Albany State University,
18 attention Student Kevin Dunbar, Jr., for the university to deliver to his dormitory
19 on campus.
- 20 • Publication in the Sun Sentinel and the Albany Herald for four weeks.
- 21 • Emailing the complaint and summons to Kevin Dunbar's email addresses:
22 kdunbar@students.asurams.edu and kevin.dunbar@gmail.com.
- 23 • Texting and calling Kevin Dunbar at his last known telephone number and leaving
24 a text message and voicemail explaining the details of the service by alternative
25 means authorized in this order.

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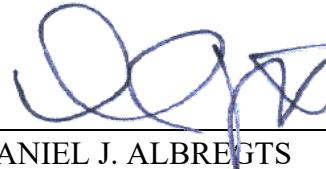
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1 **IT IS FURTHER ORDERED** that the unopposed motion for extension of time to file the
2 stipulated discovery plan and scheduling order (ECF No. 25) is **granted**. The parties shall have
3 until **May 2, 2025**, to file their stipulated discovery plan and scheduling order.

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5 DATED: February 5, 2025.

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8 DANIEL J. ALBREGTS
9 UNITED STATES MAGISTRATE JUDGE

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